

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2622
(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 42-5075, Arizona Revised Statutes, is amended to
3 read:

4 42-5075. Prime contracting classification; exemptions;
5 definitions

6 A. The prime contracting classification is comprised of the business
7 of prime contracting and dealership of manufactured buildings. Sales for
8 resale to another dealership of manufactured buildings are not subject to
9 tax. Sales for resale do not include sales to a lessor of manufactured
10 buildings. The sale of a used manufactured building is not taxable under
11 this chapter. The proceeds from alteration and repairs to a used
12 manufactured building are taxable under this section.

13 B. The tax base for the prime contracting classification is sixty-five
14 per cent of the gross proceeds of sales or gross income derived from the
15 business. The following amounts shall be deducted from the gross proceeds of
16 sales or gross income before computing the tax base:

17 1. The sales price of land, which shall not exceed the fair market
18 value.

19 2. Sales and installation of groundwater measuring devices required
20 under section 45-604 and groundwater monitoring wells required by law,
21 including monitoring wells installed for acquiring information for a permit
22 required by law.

23 3. The sales price of furniture, furnishings, fixtures, appliances and
24 attachments that are not incorporated as component parts of or attached to a
25 manufactured building or the setup site. The sale of such items may be
26 subject to the taxes imposed by article 1 of this chapter separately and
27 distinctly from the sale of the manufactured building.

28 4. The gross proceeds of sales or gross income received from a
29 contract entered into for the construction, alteration, repair, addition,
30 subtraction, improvement, movement, wrecking or demolition of any building,
31 highway, road, railroad, excavation, manufactured building or other
32 structure, project, development or improvement located in a military reuse
33 zone for providing aviation or aerospace services or for a manufacturer,

1 assembler or fabricator of aviation or aerospace products within an active
2 military reuse zone after the zone is initially established or renewed under
3 section 41-1531. To be eligible to qualify for this deduction, before
4 beginning work under the contract, the prime contractor must have applied for
5 a letter of qualification from the department of revenue.

6 5. The gross proceeds of sales or gross income derived from a contract
7 to construct a qualified environmental technology manufacturing, producing or
8 processing facility, as described in section 41-1514.02, and from subsequent
9 construction and installation contracts that begin within ten years after the
10 start of initial construction. To qualify for this deduction, before
11 beginning work under the contract, the prime contractor must obtain a letter
12 of qualification from the department of revenue. This paragraph shall apply
13 for ten full consecutive calendar or fiscal years after the start of initial
14 construction.

15 6. The gross proceeds of sales or gross income from a contract to
16 provide for one or more of the following actions, or a contract for site
17 preparation, constructing, furnishing or installing machinery, equipment or
18 other tangible personal property, including structures necessary to protect
19 exempt incorporated materials or installed machinery or equipment, and
20 tangible personal property incorporated into the project, to perform one or
21 more of the following actions in response to a release or suspected release
22 of a hazardous substance, pollutant or contaminant from a facility to the
23 environment, unless the release was authorized by a permit issued by a
24 governmental authority:

25 (a) Actions to monitor, assess and evaluate such a release or a
26 suspected release.

27 (b) Excavation, removal and transportation of contaminated soil and
28 its treatment or disposal.

29 (c) Treatment of contaminated soil by vapor extraction, chemical or
30 physical stabilization, soil washing or biological treatment to reduce the
31 concentration, toxicity or mobility of a contaminant.

32 (d) Pumping and treatment or in situ treatment of contaminated
33 groundwater or surface water to reduce the concentration or toxicity of a
34 contaminant.

35 (e) The installation of structures, such as cutoff walls or caps, to
36 contain contaminants present in groundwater or soil and prevent them from

1 reaching a location where they could threaten human health or welfare or the
2 environment.

3 This paragraph does not include asbestos removal or the construction or use
4 of ancillary structures such as maintenance sheds, offices or storage
5 facilities for unattached equipment, pollution control equipment, facilities
6 or other control items required or to be used by a person to prevent or
7 control contamination before it reaches the environment.

8 7. The gross proceeds of sales or gross income that is derived from a
9 contract entered into for the installation, assembly, repair or maintenance
10 of machinery, equipment or other tangible personal property that is deducted
11 from the tax base of the retail classification pursuant to section 42-5061,
12 subsection B, or that is exempt from use tax pursuant to section 42-5159,
13 subsection B, and that does not become a permanent attachment to a building,
14 highway, road, railroad, excavation or manufactured building or other
15 structure, project, development or improvement. If the ownership of the
16 realty is separate from the ownership of the machinery, equipment or tangible
17 personal property, the determination as to permanent attachment shall be made
18 as if the ownership were the same. The deduction provided in this paragraph
19 does not include gross proceeds of sales or gross income from that portion of
20 any contracting activity which consists of the development of, or
21 modification to, real property in order to facilitate the installation,
22 assembly, repair, maintenance or removal of machinery, equipment or other
23 tangible personal property that is deducted from the tax base of the retail
24 classification pursuant to section 42-5061, subsection B or that is exempt
25 from use tax pursuant to section 42-5159, subsection B. For the purposes of
26 this paragraph, "permanent attachment" means at least one of the following:

27 (a) To be incorporated into real property.

28 (b) To become so affixed to real property that it becomes a part of
29 the real property.

30 (c) To be so attached to real property that removal would cause
31 substantial damage to the real property from which it is removed.

32 8. Through December 31, 2009, the gross proceeds of sales or gross
33 income received from a contract for constructing any lake facility
34 development in a commercial enhancement reuse district that is designated
35 pursuant to section 9-499.08 if the prime contractor maintains the following
36 records in a form satisfactory to the department and to the city or town in
37 which the property is located:

1 (a) The certificate of qualification of the lake facility development
2 issued by the city or town pursuant to section 9-499.08, subsection D.

3 (b) All state and local transaction privilege tax returns for the
4 period of time during which the prime contractor received gross proceeds of
5 sales or gross income from a contract to construct a lake facility
6 development in a designated commercial enhancement reuse district, showing
7 the amount exempted from state and local taxation.

8 (c) Any other information that the department considers to be
9 necessary.

10 9. The gross proceeds of sales or gross income attributable to the
11 purchase of machinery, equipment or other tangible personal property that is
12 exempt from or deductible from transaction privilege and use tax under:

13 (a) Section 42-5061, subsection A, paragraph 25 or 29.

14 (b) Section 42-5061, subsection B.

15 (c) Section 42-5159, subsection A, paragraph 13, subdivision (a), (b),
16 (c), (d), (e), (f), (i), (j) or (l).

17 (d) Section 42-5159, subsection B.

18 10. The gross proceeds of sales or gross income received from a
19 contract for the construction of an environmentally controlled facility for
20 the raising of poultry for the production of eggs and the sorting, cooling
21 and packaging of eggs.

22 11. The gross proceeds of sales or gross income that is derived from a
23 contract entered into with a person who is engaged in the commercial
24 production of livestock, livestock products or agricultural, horticultural,
25 viticultural or floricultural crops or products in this state for the
26 construction, alteration, repair, improvement, movement, wrecking or
27 demolition or addition to or subtraction from any building, highway, road,
28 excavation, manufactured building or other structure, project, development or
29 improvement used directly and primarily to prevent, monitor, control or
30 reduce air, water or land pollution.

31 12. The gross proceeds of sales or gross income that is derived from
32 the installation, assembly, repair or maintenance of clean rooms that are
33 deducted from the tax base of the retail classification pursuant to section
34 42-5061, subsection B, paragraph 17.

35 13. For taxable periods beginning from and after June 30, 2001, the
36 gross proceeds of sales or gross income derived from a contract entered into
37 for the construction of a residential apartment housing facility that

1 qualifies for a federal housing subsidy for low income persons over sixty-two
2 years of age and that is owned by a nonprofit charitable organization that
3 has qualified under section 501(c)(3) of the internal revenue code.

4 14. For taxable periods beginning from and after December 31, 1996 and
5 ending before January 1, 2011, the gross proceeds of sales or gross income
6 derived from a contract to provide and install a solar energy device. The
7 contractor shall register with the department as a solar energy contractor.
8 By registering, the contractor acknowledges that it will make its books and
9 records relating to sales of solar energy devices available to the department
10 for examination.

11 15. The gross proceeds of sales or gross income derived from a contract
12 entered into for the construction of a launch site, as defined in 14 Code of
13 Federal Regulations section 401.5.

14 16. The gross proceeds of sales or gross income derived from a contract
15 entered into for the construction of a domestic violence shelter that is
16 owned and operated by a nonprofit charitable organization that has qualified
17 under section 501(c)(3) of the internal revenue code.

18 17. The gross proceeds of sales or gross income derived from contracts
19 to perform postconstruction treatment of real property for termite and
20 general pest control, including wood destroying organisms.

21 18. The gross proceeds of sales or gross income received from contracts
22 entered into before July 1, 2006 for constructing a state university research
23 infrastructure project if the project has been reviewed by the joint
24 committee on capital review before the university enters into the
25 construction contract for the project. For the purposes of this paragraph,
26 "research infrastructure" has the same meaning prescribed in section 15-1670.

27 19. The gross proceeds of sales or gross income received from a
28 contract for the construction of any building, or other structure, project,
29 development or improvement owned by a qualified business under section
30 41-1516 for harvesting or the initial processing of qualifying forest
31 products removed from qualifying projects as defined in section 41-1516 if
32 actual construction begins before January 1, 2010. To qualify for this
33 deduction, the prime contractor must obtain a letter of qualification from
34 the department of commerce before beginning work under the contract.

35 20. The gross proceeds of sales or gross income received from a
36 contract for the construction of any building or other structure associated
37 with motion picture production in this state. To qualify for the deduction,

1 at the time the contract is entered into the motion picture production
2 company must present to the prime contractor its certificate that is issued
3 pursuant to section 42-5009, subsection H and that establishes its
4 qualification for the deduction.

5 21. Any amount of the gross proceeds of sales or gross income from a
6 contract that constitutes development or impact fees paid to the state or a
7 local government to offset governmental costs of providing public
8 infrastructure, public safety and other public services to a development.

9 C. Entitlement to the deduction pursuant to subsection B, paragraph 7
10 of this section is subject to the following provisions:

11 1. A prime contractor may establish entitlement to the deduction by
12 both:

13 (a) Marking the invoice for the transaction to indicate that the gross
14 proceeds of sales or gross income derived from the transaction was deducted
15 from the base.

16 (b) Obtaining a certificate executed by the purchaser indicating the
17 name and address of the purchaser, the precise nature of the business of the
18 purchaser, the purpose for which the purchase was made, the necessary facts
19 to establish the deductibility of the property under section 42-5061,
20 subsection B, and a certification that the person executing the certificate
21 is authorized to do so on behalf of the purchaser. The certificate may be
22 disregarded if the prime contractor has reason to believe that the
23 information contained in the certificate is not accurate or complete.

24 2. A person who does not comply with paragraph 1 of this subsection
25 may establish entitlement to the deduction by presenting facts necessary to
26 support the entitlement, but the burden of proof is on that person.

27 3. The department may prescribe a form for the certificate described
28 in paragraph 1, subdivision (b) of this subsection. The department may also
29 adopt rules that describe the transactions with respect to which a person is
30 not entitled to rely solely on the information contained in the certificate
31 provided in paragraph 1, subdivision (b) of this subsection but must instead
32 obtain such additional information as required in order to be entitled to the
33 deduction.

34 4. If a prime contractor is entitled to a deduction by complying with
35 paragraph 1 of this subsection, the department may require the purchaser who
36 caused the execution of the certificate to establish the accuracy and
37 completeness of the information required to be contained in the certificate

1 which would entitle the prime contractor to the deduction. If the purchaser
2 cannot establish the accuracy and completeness of the information, the
3 purchaser is liable in an amount equal to any tax, penalty and interest which
4 the prime contractor would have been required to pay under article 1 of this
5 chapter if the prime contractor had not complied with paragraph 1 of this
6 subsection. Payment of the amount under this paragraph exempts the purchaser
7 from liability for any tax imposed under article 4 of this chapter. The
8 amount shall be treated as a transaction privilege tax to the purchaser and
9 as tax revenues collected from the prime contractor in order to designate the
10 distribution base for purposes of section 42-5029.

11 D. Subcontractors or others who perform services in respect to any
12 improvement, building, highway, road, railroad, excavation, manufactured
13 building or other structure, project, development or improvement are not
14 subject to tax if they can demonstrate that the job was within the control of
15 a prime contractor or contractors or a dealership of manufactured buildings
16 and that the prime contractor or dealership is liable for the tax on the
17 gross income, gross proceeds of sales or gross receipts attributable to the
18 job and from which the subcontractors or others were paid.

19 E. Amounts received by a contractor for a project are excluded from
20 the contractor's gross proceeds of sales or gross income derived from the
21 business if the person who hired the contractor executes and provides a
22 certificate to the contractor stating that the person providing the
23 certificate is a prime contractor and is liable for the tax under article 1
24 of this chapter. The department shall prescribe the form of the certificate.
25 If the contractor has reason to believe that the information contained on the
26 certificate is erroneous or incomplete, the department may disregard the
27 certificate. If the person who provides the certificate is not liable for
28 the tax as a prime contractor, that person is nevertheless deemed to be the
29 prime contractor in lieu of the contractor and is subject to the tax under
30 this section on the gross receipts or gross proceeds received by the
31 contractor.

32 F. Every person engaging or continuing in this state in the business
33 of prime contracting or dealership of manufactured buildings shall present to
34 the purchaser of such prime contracting or manufactured building a written
35 receipt of the gross income or gross proceeds of sales from such activity and
36 shall separately state the taxes to be paid pursuant to this section.

1 G. For the purposes of section 42-5032.01, the department shall
2 separately account for revenues collected under the prime contracting
3 classification from any prime contractor engaged in the preparation or
4 construction of a multipurpose facility, and related infrastructure, that is
5 owned, operated or leased by the tourism and sports authority pursuant to
6 title 5, chapter 8.

7 H. The gross proceeds of sales or gross income derived from a contract
8 for lawn maintenance services are not subject to tax under this section if
9 the contract does not include landscaping activities. Lawn maintenance
10 service is a service pursuant to section 42-5061, subsection A, paragraph 1,
11 and includes lawn mowing and edging, weeding, repairing sprinkler heads or
12 drip irrigation heads, seasonal replacement of flowers, refreshing gravel,
13 lawn de-thatching, seeding winter lawns, leaf and debris collection and
14 removal, tree or shrub pruning or clipping, garden and gravel raking and
15 applying pesticides, as defined in section 3-361, and fertilizer materials,
16 as defined in section 3-262.

17 I. The gross proceeds of sales or gross income derived from
18 landscaping activities are subject to tax under this section. Landscaping
19 includes installing lawns, grading or leveling ground, installing gravel or
20 boulders, planting trees and other plants, felling trees, removing or
21 mulching tree stumps, removing other imbedded plants, building or modifying
22 irrigation berms, repairing sprinkler or watering systems, installing
23 railroad ties and installing underground sprinkler or watering systems.

24 J. The portion of gross proceeds of sales or gross income attributable
25 to the actual direct costs of providing architectural or engineering services
26 that are incorporated in a contract is not subject to tax under this section.
27 For the purposes of this subsection, "direct costs" means the portion of the
28 actual costs that are directly expended in providing architectural or
29 engineering services.

30 K. Operating a landfill or a solid waste disposal facility is not
31 subject to taxation under this section, including filling, compacting and
32 creating vehicle access to and from cell sites within the landfill.
33 Constructing roads to a landfill or solid waste disposal facility and
34 constructing cells within a landfill or solid waste disposal facility may be
35 deemed prime contracting under this section.

36 L. The following apply to manufactured buildings:

1 1. For sales in this state where the dealership of manufactured
2 buildings contracts to deliver the building to a setup site or to perform the
3 setup in this state, the taxable situs is the setup site.

4 2. For sales in this state where the dealership of manufactured
5 buildings does not contract to deliver the building to a setup site or does
6 not perform the setup, the taxable situs is the location of the dealership
7 where the building is delivered to the buyer.

8 3. For sales in this state where the dealership of manufactured
9 buildings contracts to deliver the building to a setup site that is outside
10 this state, the situs is outside this state and the transaction is excluded
11 from tax.

12 M. THE GROSS PROCEEDS OF SALES OR GROSS INCOME ATTRIBUTABLE TO
13 PRECONSTRUCTION SERVICES THAT ARE PROVIDED PURSUANT TO A CONTRACT OR PORTION
14 OF A CONTRACT REQUIRING THOSE PRECONSTRUCTION SERVICES. FOR PURPOSES OF THIS
15 SECTION "PRECONSTRUCTION SERVICES" HAS THE SAME MEANING AS SECTION 34-101,
16 PARAGRAPH 22.

17 ~~M.~~ N. Notwithstanding subsection ~~N-0~~, paragraph 8 of this section, a
18 person owning real property who enters into a contract for sale of the real
19 property, who is responsible to the new owner of the property for
20 modifications made to the property in the period subsequent to the transfer
21 of title and who receives a consideration for the modifications is considered
22 a prime contractor solely for purposes of taxing the gross proceeds of sale
23 or gross income received for the modifications made subsequent to the
24 transfer of title. The original owner's gross proceeds of sale or gross
25 income received for the modifications shall be determined according to the
26 following methodology:

27 1. If any part of the contract for sale of the property specifies
28 amounts to be paid to the original owner for the modifications to be made in
29 the period subsequent to the transfer of title, the amounts are included in
30 the original owner's gross proceeds of sale or gross income under this
31 section. Proceeds from the sale of the property ~~THAT ARE~~ received after
32 transfer of title ~~AND~~ that are unrelated to the modifications made subsequent
33 to the transfer of title ~~will~~ ARE not ~~be~~ considered gross proceeds of sale
34 or gross income from the modifications.

35 2. If the original owner enters into an agreement separate from the
36 contract for sale of the real property providing for amounts to be paid to
37 the original owner for the modifications to be made in the period subsequent

1 to the transfer of title to the property, the amounts are included in the
2 original owner's gross proceeds of sale or gross income received for the
3 modifications made subsequent to the transfer of title.

4 3. If the original owner is responsible to the new owner for
5 modifications made to the property in the period subsequent to the transfer
6 of title and derives any gross proceeds of sale or gross income from the
7 project subsequent to the transfer of title other than a delayed disbursement
8 from escrow unrelated to the modifications, it is presumed that the amounts
9 are received for the modifications made subsequent to the transfer of title
10 unless the contrary is established by the owner through its books, records
11 and papers kept in the regular course of business.

12 4. The tax base of the original owner is computed in the same manner
13 as a prime contractor under this section.

14 ~~N.~~ 0. For the purposes of this section:

15 1. "Contracting" means engaging in business as a contractor.

16 2. "Contractor" is synonymous with the term "builder" and means any
17 person or organization that undertakes to or offers to undertake to, or
18 purports to have the capacity to undertake to, or submits a bid to, or does
19 personally or by or through others, modify any building, highway, road,
20 railroad, excavation, manufactured building or other structure, project,
21 development or improvement, or to do any part of such a project, including
22 the erection of scaffolding or other structure or works in connection with
23 such a project, and includes subcontractors and specialty contractors. For
24 all purposes of taxation or deduction, this definition shall govern without
25 regard to whether or not such contractor is acting in fulfillment of a
26 contract.

27 3. "Dealership of manufactured buildings" means a dealer who either:

28 (a) Is licensed pursuant to title 41, chapter 16 and who sells
29 manufactured buildings to the final consumer.

30 (b) Supervises, performs or coordinates the excavation and completion
31 of site improvements, setup or moving of a manufactured building including
32 the contracting, if any, with any subcontractor or specialty contractor for
33 the completion of the contract.

34 4. "Manufactured building" means a manufactured home, mobile home or
35 factory-built building, as defined in section 41-2142.

36 5. "Modification" means construction, alteration, repair, addition,
37 subtraction, improvement, movement, wreckage or demolition.

1 6. "Modify" means to construct, alter, repair, add to, subtract from,
2 improve, move, wreck or demolish.

3 7. "Prime contracting" means engaging in business as a prime
4 contractor.

5 8. "Prime contractor" means a contractor who supervises, performs or
6 coordinates the modification of any building, highway, road, railroad,
7 excavation, manufactured building or other structure, project, development or
8 improvement including the contracting, if any, with any subcontractors or
9 specialty contractors and who is responsible for the completion of the
10 contract. Except as provided in subsections E and M of this section, a
11 person who owns real property, who engages one or more contractors to modify
12 that real property and who does not itself modify that real property is not a
13 prime contractor within the meaning of this paragraph regardless of the
14 existence of a contract for sale or the subsequent sale of that real
15 property.

16 9. "Sale of a used manufactured building" does not include a lease of
17 a used manufactured building.

18 Sec. 2. Retroactivity; refunds; nonseverability

19 A. Section 42-5075, subsection M, Arizona Revised Statutes, as added
20 by this act applies retroactively to taxable periods beginning from and after
21 December 31, 2000.

22 B. Any claim for refund of transaction privilege tax based on the
23 retroactive application of section 42-5075, subsection M, as added by this
24 act, must be submitted to the department of revenue on or before December 31,
25 2008, pursuant to section 42-1118, Arizona Revised Statutes. A failure to
26 file a claim on or before December 31, 2008 constitutes a waiver of the claim
27 for refund under this section.

28 C. The aggregate amount of refunds under this section shall not exceed
29 ten thousand dollars including interest. If the aggregate amount of the
30 claims under this section that are ultimately determined to be correct
31 exceeds ten thousand dollars, then each claim shall be proportionately
32 reduced so that the total refund amount equals ten thousand dollars. Amounts
33 due under this section shall not be refunded unless the taxpayer requesting
34 the refund provides evidence satisfactory to the department of revenue that
35 amounts of tax and interest collected from other persons by the taxpayer will
36 be returned to those persons.

1 D. This section does not extend the statute of limitations for
2 assessment or refund beyond that which is open under sections 42-1104 and
3 42-1106, Arizona Revised Statutes.

4 E. If any part of this section is finally adjudicated to be invalid,
5 the entire section is void. The provisions of this section are intended to
6 be nonseverable."

7 Amend title to conform

and, as so amended, it do pass

STEVE YARBROUGH
Chairman

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